

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. SCOTT, # 191939,)
)
Plaintiff,) Case No. 1:95-cv-571
)
v.) Honorable Joseph G. Scoville
)
PATRICK CHURCHILL, et al.,)
)
Defendants.) **ORDER**
)
_____)

This was a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. Following a jury trial, the court entered judgment in favor of defendant on March 30, 2005. The court thereafter denied plaintiff's timely motion for a new trial. Plaintiff filed a notice of appeal and amended notice of appeal, along with a motion to proceed *in forma pauperis* on appeal. By order entered June 27, 2005 (docket # 213), the court denied plaintiff's motion for leave to appeal *in forma pauperis* under the "three-strikes" provision of 28 U.S.C. § 1915(g). The court ordered plaintiff to pay the \$255.00 appellate filing fee within thirty days.

Presently pending before the court are two motions related to the court's denial of *in forma pauperis* status. The first is plaintiff's motion for reconsideration (docket # 215) and the second is his motion for an order providing him with free trial transcripts. (docket # 218). The court takes up each motion in turn.

Plaintiff's motion for reconsideration raises two essential grounds. First, plaintiff correctly points out that his former *pro bono* counsel, S. Grace Davis, paid the \$255.00 appellate

filings fee on his behalf on May 2, 2005. On this issue, the court stands corrected. The order denying plaintiff leave to proceed *in forma pauperis* is hereby modified to reflect that the appellate filing fee has been paid. The remainder of plaintiff's motion for reconsideration represents an attack on the applicability of the "three-strikes" provisions of the PLRA to his case. The court has adequately addressed these issues in its order denying leave to appeal *in forma pauperis*. Suffice it to say that plaintiff's present arguments are foreclosed by governing Sixth Circuit authority.

Plaintiff's second motion is for the provision of free transcripts. Although plaintiff's previous attorney generously paid the appellate filing fee, this fact does not disturb the court's previous determination that plaintiff is not entitled to proceed *in forma pauperis* on appeal under 28 U.S.C. § 1915(g). Trial transcripts are available at government expense under 28 U.S.C. § 753(f) only for "persons permitted to appeal *in forma pauperis*." Plaintiff's motion for transcripts must therefore be denied. Accordingly:

IT IS ORDERED that plaintiff's motion for reconsideration (docket # 215) be and hereby is GRANTED, to the limited extent that plaintiff shall not be required to pay the appellate filing fee, which has already been tendered by his former counsel. In all other respects, the court's previous order denying plaintiff leave to appeal *in forma pauperis* (docket # 213) is REAFFIRMED.

IT IS FURTHER ORDERED that plaintiff's motion for transcripts (docket # 218) be and hereby is DENIED.

IT IS FURTHER ORDERED that the Clerk shall certify a copy of this order to the Clerk of the Court of Appeals.

DONE AND ORDERED this 27th day of July, 2005.

/s/ Joseph G. Scoville
United States Magistrate Judge
